Darley Main Colliery Co. v. *Mitchell*, 11 App. Cas. 127, 144. Where, however, the action is not divisible, probably the jury may be compelled to apportion the damages. Certainly this is true in many American states. 28 Am. & Eng. Enc. of Law, 1st ed. 395. The rules against maintenance to-day would hardly prevent suit on the whole claim by the assignee as trustee for himself and the bankrupt. This procedure appears free from technical and practical difficulties.

A recent English case is interesting as involving these questions. *Rose* v. *Bucket*, 17 T. L. R. 544. In an action for trespass to land and conversion of goods, the principal damages claimed were for personal annoyance. The trial judge, on application made before the jury were sworn, ordered the action stayed because the plaintiff was adjudged a bankrupt after the action accrued. The court of appeal reversed the decision, saying the "essential cause of action" was the "primary personal injury to the bankrupt." It would seem that on proper motions two actions might have been ordered, or, at least, that the damages might have been apportioned. The decision, however, follows earlier cases in making the character of the main portion of the damages the test of the rights of the bankrupt and his assignees. *Brewer* v. *Dew*, 11 M. & W. 625. It is to be regretted that the court was unable to find a more accurate rule.

PUBLICATION OF A LIBEL BY DICTATION TO A STENOGRAPHER. — The court of appeals of Maryland has recently decided that the dictation by the defendant of libellous letters to a stenographer by whom they are subsequently typewritten and transmitted to the plaintiff is a publication of a libel. *Gambrill* v. *Schooley*, 48 Atl. Rep. 730. In view of the present almost universal method of indirect correspondence the decision is of great importance to the business community. Little authority is to be found directly on the point. An English case is cited in support of the decision, but the Supreme Court of New York has reached an opposite result. *Pullman* v. *Hill*, [1891] 1 Q. B. 524; *Owen* v. *Ogilvie Pub. Co.*, 32 N. Y., A. D. 465.

As in the principal case, the plaintiff was the addressee of the libellous letter, the publication if any must have been to the person to whom the words were spoken. Hence the question involved must be distinguished from that raised in two other classes of cases. It is not a case of privileged communication. In those cases the same policy, which demands that the communications be privileged, requires that the method of making them be not narrowly restricted. And if incidentally, in the usual course of communication, a subsidiary publication be made, that too should be privileged. Here, at all events in the absence of malice, there should be no liability. *Boxsius* v. *Frères*, [1894] 1 Q. B. 842. On the other hand, the cases in which the defendant procures another to publish the former's words are not authorities for the principal case. There is always in those cases a publication of words *after* they have been reduced to writing, and the question is merely as to responsibility. *Pullman* v. *Hill*, *supra*, falls within this class. The defendant was there liable at all events for the publication to the plaintiff's clerks who read the letter. *Delacroix* v. *Thevenot*, 2 Stark. 63. The decision, therefore, not necessarily involving the point at issue, lends little support to the principal case.

That there was in the principal case a publication of defamatory words is not doubted, but it is by no means clear that there was a libel at all as distinguished from a slander. Lord Esher defines the publication of a libel as "The making known the defamatory matter after it has been written. . . ." It involves the idea of a manuscript written by the defendant or in his hands, and through his fault communicated to a person other than the one defamed. Odgers, Libel and Slander, 3d ed., 170, 171. In the principal case, however, these requirements are not fulfilled. When the words were uttered, no writing was in existence. That was only created subsequently, and then not by the defendant, but by the very person to whom it is contended the libel was published. That there cannot be a publication of a writing that has no existence is obvious. It follows that there was a publication by the defendant of words merely, and that the action should have been for slander and not for libel. Odgers, Libel and Slander, 3d ed., 174.

The distinction suggested is technical but it leads to important practical results. A libel is actionable without proof of special damage, but a slander is not unless the words are actionable *per se*. Accordingly, if the proper action is for libel the employer must be held in every case, whereas if for slander, he would rarely if ever be liable, unless the words were actionable *per se*, since he is not as a rule liable for repetitions. *Shurtleff* v. *Parker*, 130 Mass. 293. Sound public policy demands the latter result. If the law allows a communication to be made it seems sensible that it should be made according to the usual method of transacting business, and the welfare of the business community requires that acts so done shall not become the basis of litigation. On the other hand, it is urged that business necessity must not be made an excuse for licensed defamation. The observance of the distinction between libel and slander here suggested will result in a satisfactory compromise between these extremes. The liability of employers is limited to cases in which ordinary good taste and often common decency would forbid indirect communication, while the general public suffers no undue hardship, since in aggravated cases the action for slander still remains.

RECENT CASES.

ADMINISTRATIVE LAW — CONTRACTS — BOND OF INDEMNITY FOR NOT LEVYING EXECUTION. — A sheriff was in honest doubt as to whether a *fieri facias*, valid on its face, was issued within the time allowed by law. The defendants gave the sheriff a bond of indemnity with condition to save him harmless in not making the levy. *Held*, that the bond was valid. *Ray* v. *McDevitt*, 85 N. W. Rep. 1086 (Mich.).

The current of authority supports the view that an instrument is void if given to indemnify an officer of the court against loss resulting from failure to execute process, which is on its face such as the court could legally have issued. *Denson* v. *Sledge*, 2 Dev. Law (N. C.) 136; *contra*, *Randle* v. *Harris*, 6 Yerg. (Tenn.) 508. In such cases, good faith of the officer has generally been held immaterial. *Harrington* v. *Crawford*, 136 Mo. 467; *contra*, *Joyce* v. *Williams*, 1 Tayl. (N. C.) 27. To enable courts to enforce their judgments, the law protects an officer in executing a writ good on its face. FREEMAN, EXECUTIONS, 3d ed., § 101. When an officer is thus protected, a contract to save him harmless in not obeying the writ encourages disobedience of the order of the court, and therefore is clearly against the policy of the law. A contract to indemnify the officer against the consequences of executing a similar